

EXHIBIT A

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

720

No. 843

SECURITIES AND EXCHANGE COMMISSION,
PETITIONER

vs.

W. J. HOWEY COMPANY AND HOWEY-IN-THE-HILLS
SERVICE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

(c) The exercising of the option to foreclose shall not operate as a breach or rescission of this indenture, or any of the terms hereof, on the part of second party, but in the event that final decree is secured by said second party, then this indenture shall terminate in all respects.

Seventh: This agreement is executed in duplicate and is binding upon the parties hereto, their heirs, successors and assigns, and it expressly agreed upon that the covenants and conditions of this indenture shall run with the land and with the reversion.

Executed at Howey-in-the-Hills, Lake County, Florida, on the day and year first above written.

(Seal)
Party of the First Part.

(Seal)
Party of the First Part.
HOWEY-IN-THE-HILLS SERV-
ICE, INC.,

By
Vice-President, Party of the
Second Part.

Signed, sealed and delivered in the presence of:

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The development of what is known as "Howey-in-the-Hills" was started by Mr. W. J. Howey in 1915 when he purchased a large tract of land, approximately 100,000

acres in extent. Of this area, about 40,000 acres is water and waste land, and the balance is good citrus land. There has been developed about 10,000 acres of grove which is now in bearing and about 2,000 acres of young groves which will be bearing in another four or five years.

Mr. Howey died in 1938 and Mr. Griffin and I bought the stock in the operating companies in 1940. We have been trying to build up the property as a tourist resort, and have renovated the hotel building, and made various improvements in it, such as the bathing beach, the stables, and the golf course. We are also developing as rapidly as we can the remaining citrus acreage, and during the last three years we have planted about 500 acres of grove annually. We are both primarily in the citrus business and expect to continue to be all our lives. Each year we set aside half or more of the newly planted groves to keep, and these are not for sale. The balance of the newly planted groves we do offer for sale to help us finance additional development.

The Howey tract is one of the most favored citrus areas. It lies immediately south of several large lakes, such as Lake Harris, Lake Griffin, Lake Eustis, and Lake Yale. There are between two and three hundred smaller lakes interspersed through the property. These lakes, coupled with the rolling topography of the land, give the area remarkable resistance to frost, as the lakes tend to warm any cold air which may descend on us from the north. In addition, cold air tends to drain down the hillsides into the valleys. In the history of this property the principal damage to the trees from cold has come in the pockets from which there is no air drainage, and we have removed all the trees from such areas.

The entire area is also underlaid with a red clay sub-soil, such as you see on these roads. A citrus tree has a long tap root through which it absorbs its moisture. This tap root customarily grows until it reaches moisture, which in this country is this clay sub-soil. Because this clay holds moisture just like a blotter, we have here a remarkable resistance to drought. In case of dry weather, trees here will show no signs of distress long after trees on the low lands show wilt.

In choosing the varieties of fruit which we are going to grow, we are guided entirely by commercial considerations. For that reason we don't propagate nor grow any varieties except those with a ready market acceptance. It takes two or three years in the nursery and another five years in the grove to get a tree ready to bear, and so we want to know that we're going to have fruit we can sell before we begin to grow a tree.

In some of the earlier plantings, there are Duncan grapefruit and Pineapple oranges. These are fine varieties of fruit, but they have the market disadvantage of being seeded fruit and of coming on the market in mid-season, when the great bulk of the citrus crop moves. Plantings in later years were almost exclusively Marsh seedless grapefruit and Valencia oranges. These are both late varieties, coming on the market in March, April, and May, or, in some cases, as late as June. Because they move after the larger volume of citrus is off the market and because they are seedless, they have ready market acceptance, and almost always bring preferred prices. In fact, these two varieties have for some years been the money crops of Florida citrus. Yet they do have certain disadvantages. All grapefruit varieties are fast growing, heavy bearing trees, but there have been some seasons, particularly during the depression, when grapefruit was hard to sell

Valencias, while they almost always bring good prices, are a relatively slow growing tree and relatively light bearers. The fruit on both varieties, because they mature late in the season, must be carried on the tree through the winter, which means that there is some element of frost risk in them.

It is to overcome these disadvantages that we have largely confined our plantings in the last three years to the Hamlin orange. This tree and the fruit seemingly possess every essential advantage for citrus. It is a fast growing, prolific bearing tree. The fruit, properly grown, is of exceptionally fine quality. It has smooth texture, thin skin, and is practically seedless. It matures in October or early November and is the first Florida fruit on the market. Because it comes on the market by itself, it always brings a preferred price. The price may not be quite as high as Valencias bring later in the season, but because the production is greater the revenue from each tree is more than from a Valencia. The early maturity practically eliminates the frost risk, and also any loss from a fall drought which we quite often have. Because the fruit is off the trees early, the trees can be cultivated and fertilized in the fall and winter with no other idea than to produce the next crop of fruit, and without having to safeguard the quality of the crop on the trees, as we must do with Valencias. While we have groves planted to all the standard varieties, we think the Hamlin orange is the finest of all of them, and if anyone wanted a small grove of one variety, we think this is the one he should choose.

Our cultural practices on young groves are intensive cultivation and fertilization for nine months of the year. The tree rows are worked every ten days or two weeks during that period and the trees are fertilized every sixty days. In December, January and February we keep the

trees as dormant as we can, because it is in those three months we will get cold weather if we're going to have any. Pruning on young trees is mainly confined to cutting off lemon sprouts coming out below the bud. There is practically no spraying on young trees, although this fall we did give all the one and two-year-old trees a nutritional spray to kill scale, which seemed to be generally present in minor quantities.

It costs about \$50 per acre per year on an average to take care of a young grove in this manner. It could be done cheaper, but our methods produce a heavy, lush growth and get a bearing tree quicker than the cheaper methods. And that is what we're after—to get a bearing tree as quickly as we can. We continue with these methods until the tree is about five years old, when we let it bear its first crop. Then we radically change our cultural methods to produce fruit rather than tree growth.

In a bearing grove, we fertilize rather heavily twice a year, once in May and again in December or January. A Grapefruit tree the size of most of our bearing trees gets 20 to 25 pounds in each application, and an orange tree, 15 to 20 pounds. The trees are also sprayed several times a year. Early in the spring we put on a strong lime sulphur solution, or what is called a "dormant spray" to protect the bloom from thrips. Then about May we use a "Bordeaux" spray, which is a mixture of copper and lime to control melanose. In the summer and fall we use an oil emulsion spray for scale, or a lime sulphur spray for rust mite as the groves may need them. We try to produce good, clean fruit, free from blemishes, and to do this we have to fertilize and spray in the quantities and at the time we should.

We aren't particularly interested in what it costs to take care of an acre of grove, but we are very much interested in what it costs to produce a box of fruit. Last year, costs on bearing groves averaged about \$75 per acre. We produced grapefruit for about 20 cents per box and oranges for about 40 cents per box. This year labor costs are considerably higher, and consequently production costs will be somewhat increased.

Bearing groves are only cultivated during the winter. In the summer we allow either leguminous cover crops or the natural grasses to grow in the middles. In the fall we disc or plow these middles, and break the grass into the soil. This adds a certain amount of humus or organic matter to the soil.

There is some necessity for pruning. After the crop is taken from the trees, some dead wood shows up, but we don't do nearly as much pruning as we used to. It is an expensive operation to remove all this fine dead wood, and we have found that it gradually falls off anyway. So now we confine most of our pruning to large dead limbs.

We never prune off any live wood nor attempt to direct the growth of a bearing tree through pruning. Our object in growing these trees is to get a large tree with plenty of bearing surface. The inside as well as the outside of the tree bears fruit, and we want all that good wood in there to get the largest possible crops. The larger crops we can produce, the greater the return and the lower the production costs, and consequently the more profitable the grove. We're trying to produce this fruit at a low enough cost, so there is a good profit in it, even when prices are lower than they are now.

In fertilizing a grove, the principal constituents of a fertilizer mixture are ammonia, phosphoric acid and potash. We want at least 25% of the mixture to be organic substances which are slow feeding. In addition, we must

give attention to the so-called minor elements, magnesium, manganese, copper, and zinc. The U. S. Department of Agriculture has conducted experiments over the years, which show that trees obtaining all of these minor elements produce larger and better quality of crops, are more resistant to disease and the natural hazards of frost and drought. We apply these minor elements both in fertilizer and in spray solutions.

All of these trees here are budded trees, as opposed to trees grown direct from the seed. We bud the variety of citrus fruit we want on a rough lemon seedling about two years old. There are two common root stocks in Florida the sour orange and the rough lemon. The sour orange is a slow growing stock and is somewhat more resistant to cold damage than the rough lemon. It is particularly suited to low lands with a heavy soil, where it is apt to be colder than in this section, and where there is a good deal of nutriment in the soil. In these sand hills, however, it would take nearly fifteen years to get a tree on sour orange stock, and, with out natural protection against cold, we don't need the hardier stock. Trees on a rough lemon root system are, therefore, the only practical ones for this locality. We are doing some work now with trees on Cleopatra Mandarin stock, which is a trifle slower growing and somewhat hardier than the rough lemon.

As in any other thing in which nature is a factor, the production of citrus trees varies somewhat from season to season. In general we expect the range of production on grapefruit trees, the age of these bearing trees we have here, to be from 8 to 10 boxes per tree and on orange trees around 4 or 5 boxes per tree. On the Hamlin orange we will be able to get larger production than on Valencias, and on Hamlin trees of comparable age the production should be 6 or 7 boxes per tree. The trees are planted on 30-foot centers, which makes 48 trees per acre.

Prices for fruit also vary from season to season. We usually sell our fruit on-the-tree to outside buyers, who do the picking and packing and pay us for each day's picking as it is completed. We like this method of sale, because it relieves us of all responsibility except checking the amount of fruit picked, and enables us to settle with our growers within about two weeks from the time the fruit is picked. We keep a checker with each picking crew, and a separate count is made of the fruit belonging to each individual grower.

This year we have already sold all our Hamlins for \$2.00 per box on-the-tree. All of our Pineapples for \$1.85 per box on-the-tree and some of our Duncan grapefruit for \$1.00 per box on-the-tree. These prices now are pretty well established by the ceiling price, and are about as much as the grower can get under the ceiling. These prices aren't unusually high due to the war, because the ceiling price was based on the average price over the several years immediately preceding the war. I have seen several seasons in which prices were as high or higher than those we are now getting.

Last season most groves made profits after production costs of about \$200 per acre, although many groves did better than that. This year, based on our estimated crops and the prices we are getting, the general level of profits will probably be a little higher. However, I wouldn't want anyone who bought a grove to expect to average over the next ten years, or over the first ten years of bearing if they bought a young grove, much more than \$100 per acre profit. There are going to be bad years with the good, and the productivity of a grove should be judged over a period of years.

The citrus industry has been the basic industry of this section of Florida since its settlement right after the Civil War. There are trees in this immediate vicinity that were

planted around 1865 which are still producing large crops of fruit. I am told that there are trees in Spain and Italy which are 200 and 300 years old.

During the twenty years I have been here, I have seen the production of citrus fruit in Florida increase from about 25,000,000 boxes to about 60,000,000 boxes last season. Demand and consumption for that greatly increased volume has been built up and sustained and the fruit is still being sold at good prices. There will, of course, be further increases in production, but the area still remaining in the State which is good citrus land is limited. Meanwhile, improved methods of canning and the new dehydration processes being worked out by the Government to ship fruit juices to the armed forces abroad will undoubtedly lead to still further increases in demand and consumption. Such processes will, too, probably result in economies in handling, so that fruit or fruit juices can be sold very reasonably and still leave the grower about the same price that he is now getting.

Don't buy a grove unless you are prepared to take good care of it. Nothing responds so quickly to care or lack of care as a citrus tree, and a grove will be of no value to you unless you look after it. If you do buy a grove, you buy a specific piece of land to which you hold title, and it is yours to do with as you like.

The growing of citrus fruit is an old established business in Florida in which a large number of people are engaged, and we don't claim to be the only people who know how to do it right. Naturally, if you buy a grove we would like to look after it for you, and we think we could satisfy you as we have hundreds of others. But, if you don't want our care, you are at liberty to employ anyone you wish, or to look after it yourself.